IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/12/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.1974 OF 1998

Smt.Sajoja .. Petitioner

-Vs-

1. The Senior Regional Manager (E.I.)
Food Corporation of India
5/54 Greams Road
Chennai 6

2.The Collector
Tirunelveli .. Respondents

(R 2 impleaded as per order
of Court dated 31.10.2002
by PKMJ)

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.P.Peppin Fernando

^For Respondent-1: Mr.P.D.Audikesavan
for P.A.Deivasigamani
Associates

For Respondent-2: Mrs. N.G.Kalaiselvi
Spl.G.P.

:J U D G M E N T
On the basis of community certificate dated 5.10.82, issued by the Tahsildar, Palayamkottai, the petitioner had applied for employment under the Food Corporation of India, the second respondent herein. The petitioner was in the waiting list. Subsequently, the petitioner was given offer to join service subject to production of community certificate from the Collector. The respondent No.1 also wrote to the Collector, Tirunelveli in this matter, but the Collector has not given any reply. While the matter stood thus, the petitioner has filed this writ petition for quashing the order passed by the first respondent seeking for clarification from the Collector regarding community status and for a further direction to the first respondent to

appoint the petitioner in the post of Assistant Grade III(GENL) without insisting on the production of another community certificate.

2. Learned counsel for the petitioner has contended that since the community certificate had already been issued, the respondent No.1 should not have insisted upon production of another community certificate. This submission has been resisted by the learned counsel for the respondent No.1.

3. In J.T. 1997(7) SC 660 (R. KANDASAMY v. THE CHIEF ENGINEER, MADRAS PORT TRUST) it was observed as follows :-
" . . . 5. In our opinion the Community Certificate issued to a Scheduled Tribe candidate by the Tehsildar prior to 11.11.89 is a good and valid Community Certificate for all purpose so long as such a certificate is not cancelled. The authorities cannot decline to take that into consideration and insist upon a fresh community certificate from the Revenue Divisional Officer.
6. The judgments of the High Court under the circumstances cannot be sustained. They are set aside and by a Mandamus we direct the respondent to take into consideration the Community Certificate issued to the appellant by the Tehsildar which had already been produced before it for the purpose of consideration of the appellant to the appointment.

7. We clarify that we have only dealt with the legal aspect of the matter and have not pronounced upon the genuineness for which if there is any doubt (though none appear to have been raised in the High Court and none was projected before us either) the respondent shall have o hold a proper enquiry but till that certificate is not cancelled, the certificate shall be treated as a valid certificate issued by the competent authority."

4. In A.I.R. 1996 Madras 396 (K. SURESH BABU v. STATE OF TAMIL NADU AND OTHERS) while holding that community certificate granted by the appropriate authority, namely the Tahsildar, prior to 11.11.1989 are good enough for all the concerned authorities to take them into consideration for the purpose of admission into educational institution or appointment in a public service, it was observed that it would be open to the competent authority to enquire into and cancel the community certificate if such certificate was not genuine or valid.

5. In 2002 WLR 866 (N. THAYANANDAR v. STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVERNEMNT, HEALTH AND FAMILY WELFARE DEPARTMENT, CHENNAI AND OTHERS), I had the occasion to dealt with a similar matter while considering the question of admission into educational institution.

It was observed :
" . . . Law is well settled that until such community certificate issued by the competent authority is cancelled in accordance with law, such community certificate is to be acted upon and it is not open to be ignore in any collateral proceeding or by any authority including the State. . . ."

After referring a Division Bench decision reported in 2002 WLR 825

(N.S. ZIAUDDEEN vs. S. ASHOK KUMAR, PRINCIPAL SESSIONS JUDGE AND 3 OTHERS) it was further observed
" . . . What was observed by the Division Bench in Quo Warranto proceedings in the High Courts is in fact applicable with more vigour in respect of other proceedings such as matters relating to admission or appointment. . ."

6. Learned counsel appearing for Food Corporation of India, however, placed strong reliance upon the decision reported in A.I.R. 1995 SC 94 (KUMARI MADHURI PATIL AND ANOTHER v. ADDL. COMMISSIONER, TRIBAL DEVELOPMENT AND OTHERS) and submitted that an intending employer has the right, nay, an obligation to verify the genuineness of the community certificate before giving employment to a person and in the present case, the respondent Corporation has only followed the ratio of the aforesaid decision and has called upon the petitioner to produce a fresh community certificate from the appropriate authority.

7. It is no doubt true that the aforesaid decision prescribes certain general principles relating to the manner of enquiry into validity of community certificate, but it cannot be said that the aforesaid decision has laid down an inexorable principle to the effect that in no case, the community certificate granted by a competent authority can be relied upon by the appointing authority until such community certificate has been "revalidated" by the scrutiny committee. Moreover, the subsequent decision of the Supreme Court in J.T. 1998 (7) SC 660 (cited supra) which specifically relates to question of appointment on the basis of the community certificate without any fresh verification is applicable to the present case. In the latter case the Supreme Court specifically reversed the decision of the learned single Judge of this Court as confirmed in appeal wherein it had been held that the appointing authority was justified in calling upon the candidate to produce fresh valid community certificate. Since the latter Supreme Court decision is directly on the point, the general observations made in the earlier Supreme Court decision need not be applied in preference to the subsequent decision, which is specifically applicable to the facts of the present case.
8. For the aforesaid reasons, the writ petition is allowed and the respondent Corporation is directed to give appointment to the petitioner within a period of one month from the date of communication of the present order. However, since the question of validity of certificate has already been raised by the first respondent, it is directed that the matter shall be considered by the appropriate State Level Committee in accordance with law within a period of six months from the date of communication of the order. If ultimately the community certificate is found to be invalid by the appropriate State Level Committee, it would be open to the employer to cancel the order of appointment and even to recover the amount paid to the petitioner. No costs.

05-12-2002

Index: Yes
Internet: Yes
dpk

To

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